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Item 77 of the preliminary list*
Responsibility of States for internationally wrongful acts

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Comments and information received from Governments

Report of the Secretary-General

Addendum

I. Introduction

As at 28 June 2013, the Secretary-General had also received written comments from Portugal (dated 6 May 2013).

II. Comments on any future action regarding the articles on responsibility of States for internationally wrongful acts

Portugal

[Original: English]
[6 May 2013]

It has been more than 60 years since the Commission decided to embark on what is certainly one of its most important projects. The topic has been maturing since 1949, when the Commission first selected the subject of State responsibility as being suitable for codification. It was one of the first topics to be selected as meeting that criterion.

In 2010, the General Assembly decided to include the topic in the provisional agenda of its sixty-eighth session and to further examine the question of a convention on responsibility of States for internationally wrongful acts or other appropriate action on the basis of the articles on the matter, of which the Assembly had taken note in 2001.

* A/68/50.

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The articles have undergone a period of maturation, and Portugal feels that the time is ripe for taking a decision on future action. Portugal recognizes that Member States have different views as to the future of the articles, as reflected in the written comments that Governments, including its own, submitted in 2007 and 2010.[1] These views range from supporting a convention to merely adopting the articles in a General Assembly resolution.

As Portugal has already had the opportunity to state before the Sixth Committee[2] and in its previous written comments on the matter,[3] it continues to believe that this is an area of international law that deserves to be incorporated into a legal instrument that will certainly contribute in a decisive manner to respect of international law and to peace and stability in international relations.

States must not be overcautious about moving forward in this area since the only concern is to establish the consequences of the international wrongful acts and not to provide a definition of the wrongful act itself. State responsibility pertains only to the secondary rules and not the primary rules which define the obligations of States.

If one wants convincing evidence for the opportunity and fundamental need to proceed in this field one only has to turn to State practice and to the decisions of international courts and tribunals, including the case law of the International Court of Justice. The report prepared by the Secretary-General containing a compilation of decisions of international courts, tribunals and other bodies[4] clearly illustrates this.

Furthermore, it would be senseless not to proceed in the development and codification of this matter and to continue to proceed in others, such as diplomatic protection, liability and responsibility of international organizations, when the main principles that guide the development of these latter subjects are the same that apply to State responsibility.

Therefore, Portugal considers that the articles on responsibility of States for international wrongful acts should be adopted as a binding international convention.

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[1] See A/62/63 and Add.1 and A/65/96 and Add.1.

[2] A/C.6/62/SR.12, paras. 68-70, and A/C.6/65/SR.15, paras. 9 and 10.

[3] A/62/63 and A/65/96.

[4] A/62/62 and Corr.1 and A/62/62/Add.1, A/65/76 and A/68/72.